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IN THE

Supreme Court of the United States

October Term, 1962

No. 565

ISBRANDTSEN COMPANY, INC.,
Petitioner,

v.

PAUL MAXIMO, WALTER SALO, ARTHUR R. CRUYS, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

LEE PRESSMAN,
Attorney for Respondents,
50 Broadway,
New York 4, N. Y.

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Questions Presented

1. Whether a claim for abuse of process in the bringing of a seaman's wage libel is a proper cross-libel under Admiralty Rule 50.

2. Whether the Court of Appeals abused its discretion in granting petitions for mandamus directing the District Court to vacate its stays of seamen's wage libels until the seamen posted security for damages sought by their employer in cross-libels for abuse of process.

Statement

The orders entered herein are all addressed to or based on the pleadings; no testimony has been taken and no trials have been held.

The Court of Appeals granted the petitions for mandamus on the ground that a claim for abuse of process is not a proper cross-libel in a seaman's wage libel since it does not arise out of the cause of action for which the original libel was filed, within the meaning of Admiralty Rule 50. That Court also noted that the claim for abuse of process depends upon the outcome of the original proceeding. (Petition, p. 7a.)

Reasons for Denying the Writ

The cases cited by Petitioner do not establish "a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeal". *Layne & Bowler Corporation* v. *Western Well Works*, 261 U. S. 387 (1923).

The two Circuit Court cases cited by Petitioner, *Tampa Ship Repair & Drydock Co.* v. *Esso Export Corp.*, 237 F. 2d 506 (5th Cir., 1956); *Frontera Fruit Co.* v. *Dowling*, 91 F. 2d 293 (5th Cir., 1937), (Petition, pp. 7-8) do not involve either Admiralty Rule 50 or seamen's wage claims. *Moore-McCormack Lines* v. *McMahon*, 235 F. 2d 142 (2d Cir., 1956), does not involve a cross-libel in the nature of abuse of process and does not create a conflict within that Circuit.

A petition for a writ of mandamus may be granted in the sound discretion of the Court of Appeals, *Roche* v. *Evaporated Milk Association*, 319 U. S. 21 (1943). The Second Circuit did not abuse its discretion in granting the petitions for mandamus. That Court properly entertained the petitions for mandamus on the ground that the District Court's stays were not appealable under 28 U. S. C. Section 1292(a)(1), or Section 1292(a)(3), *Schoenamsgruber* v.

Hamburg American Line, 294 U. S. 454 (1935); *Allen N. Spooner & Son, Inc.* v. *Connecticut Fire Insurance Co.*, 297 F. 2d 609 (2d Cir., 1962). The Court of Appeals exercised its discretion under 28 U. S. C. Section 1651 in granting the petitions for mandamus, grounding its interpretation of Admiralty Rule 50 on the rulings of this Court in *United States* v. *Isthmian S. S. Co.*, 359 U. S. 314 (1959) as to whether the cross-libel arose out of the same cause of action as the original wage libel, and on *Washington-Southern Navigation Co.* v. *Baltimore & Philadelphia Steamboat Co.*, 263 U. S. 629 (1924) as to Congressional policy safeguarding seamen's unencumbered access to the Federal Courts in prosecuting wage claims.

Petitioner does not appear to contend that the Court of Appeals abused its discretion. Petitioner asserts that the Court of Appeals acted without any showing of abuse of discretion by the District Court in requiring security from the seamen to respond to possible damages on the cross-libel as a condition for pursuing their wage claims.

The action of the Court of Appeals in vacating the restraint against the seamen's wage libels was an act of discretion properly and wisely exercised to carry out the policy of this Court and Congress "favoring and facilitating seamen's wage claim suits." See *Isbrandtsen Co.* v. *Johnson*, 343 U. S. 779 (1952); 28 U. S. C. Section 1916. That Congressional policy in respect to seamen's wage claims arises out of the broader policy of awarding extraordinary protection to seamen as "wards of admiralty". *Robertson* v. *Baldwin*, 165 U. S. 275 (1897); *Cortes* v. *Baltimore Insular Line, Inc.*, 287 U. S. 367 (1932); *Garrett* v. *Moore-McCormack Co., Inc.*, 317 U. S. 239 (1942); *Warner* v. *Goltra*, 293 U. S. 155 (1934). In accordance with these policies the Courts have consistently applied liberal interpretations to maritime law, in favor of seamen. *Isbrandtsen Co., Inc.* v. *Johnson*, *supra*; *Aguilar* v. *Standard Oil Co. of New Jersey*, 318 U. S. 724 (1943).

The petition does not show abuse of discretion by the Second Circuit in directing the vacating of restraints imposed by the District Court on the prosecution of seamen's wage libels.

The petition also fails to show the kind of public interest in the issues warranting a grant of *certiorari*. The fact that the question is of importance to the parties is not sufficient. *Layne & Bowler Corp.* v. *Western Well Works, supra; Rice* v. *Sioux City Cemetery*, 349 U. S. 70 (1955).

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

LEE PRESSMAN,
Attorney for Respondents.

DAVID SCRIBNER,
NED R. PHILLIPS,
of Counsel.